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FROM

RIGHT HON. LORD DUNDAS, M.P.,

HIS MAJESTY'S SECRETARY OF STATE FOR THE COLONIES,

TO

His Excellency Sir Francis Bond Head,

LIEUTENANT GOVERNOR OF UPPER CANADA,

CONTAINING HIS MAJESTY'S ANSWER

TO THE

SEPARATE ADDRESSES AND REPRESENTATIONS

Which proceeded from the Legislative Council and House of Assembly, during the First Session of the present Parliament; and his

INSTRUCTIONS TO THE LIEUTENANT GOVERNOR.

COMMUNICATED TO THE HOUSE OF ASSEMBLY BY MESSAGE ON THE 30th JANUARY, 1836.

Also,—LORD GODERICH'S DESPATCH, of 8th Nov., 1835.

PRINTED BY JAMES MACFARLANE: KINGSTON.

1836.



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DESPATCH.

F. B. HEAD.

The Lieutenant Governor transmits to the House of Assembly, the communication alluded to in His Speech to the two Houses of the Legislature, on the 27th inst.

The Lieutenant Governor was commanded by His Majesty, to communicate "the substance" of his Instructions, to both Houses of the Provincial Parliament; but considering it would be more satisfactory to them to receive the whole, he accordingly transmits it herewith.

*Government House,
30th January, 1836.*

COPY.

Downing Street, 15th December, 1835.

SIR,

I have the honor herewith to transmit to you, a Commission under His Majesty's Sign Manual, appointing you Lieutenant Governor of the Province of Upper Canada.

You have been selected for this office at an era of more difficulty and importance than any which has hitherto occurred in the history of that part of his Majesty's dominions. The expression of confidence in your discretion and ability which the choice itself implies would only be weakened by any more formal assurance, which I could convey to you.

In the following instructions I shall pre-suppose your knowledge of many occurrences, the correct understanding of which, is essential to the discharge of the duties to which you are called, but which it is unnecessary for me to recapitulate. As, however, a more exact acquaintance with Canadian affairs is indispensable for your guidance in the administration of the Government of Upper Canada, I think it right to refer you to those sources of information on which you will be able most safely to rely. Amongst these, the first place is due to the Journals of the Legislative Council, and of the House of General Assembly. The Appendices subjoined to the annual summary of the proceedings of the two Houses, contain a fund of information on almost every topic connected with the statistics and political interest of the Province: and to those Reports you will be able to resort with far greater confidence than to any other source of similar intelligence. The Report of the Committee of the House of Commons of the year 1828, with the evidence, oral and documentary, to which it refers, will also throw much light on the progress and the actual state of the questions agitated in the Upper Province. The correspondence of my predecessors and myself, with the officers who have successively administered the Provincial Government, will of course engage your careful attention.

In Upper Canada, as in all other countries which enjoy the blessing

of a free Constitution, and of a Legislature composed in part of the representatives of the people, the discussion of public grievances, whether real or supposed has always been conducted with an earnestness and freedom of enquiry of which, even when occasionally carried to exaggeration, no reasonable complaint can be made. The representatives of the Canadian people, if departing at times from the measured style and exact terms in which the investigation of truth may perhaps be most successfully conducted, have yet, even in the agitation of questions the most deeply affecting the interests of their constituents, exhibited a studious respect for the person and authority of their Sovereign, and a zealous attachment to the principles of their balanced constitution. Until the last session of the Provincial Parliament, the remonstrances of the House were chiefly confined to insulated topics of complaint; discussions, indeed, occasionally arose, and discontent was occasionally manifested: but it may be affirmed that, generally, there subsisted a spirit of amicable co-operation between the Executive Government and the Legislature.

The cession by His Majesty of the revenues raised under the statute 14 Geo. 3rd, cap. 88, to the appropriation of the House of Assembly, was a gratuitous and unsolicited act, and was accepted by that body in a spirit of grateful cordiality.

I will not pause to recapitulate the events which immediately preceded, if they did not produce the interruption of this mutual good understanding. It is sufficient for my present object to observe that the relations which had formerly subsisted between the Executive Government and the Representatives of the people underwent an entire change, immediately after the elections which took place in the autumn of 1834. The supporters of the local government now for the first time found themselves in a constant minority on every question controverted between them and their political antagonists. A committee of grievances was appointed, by which a report was made impugning the administration of affairs in every department of the public service, and calling for remedial measures of such magnitude and variety as apparently to embrace every conceivable topic of complaint. Having adopted this report, and having directed its publication, in an unusual form, the House transmitted through the Lieutenant Governor to the King, an address, in which some of the more considerable of the claims of the committee were urged in terms of no common emphasis. It will be your first duty, on the assumption of the Government to convey to the House the answer which His Majesty has been advised to return to these representations.

I cannot proceed to explain the terms of that answer without the preliminary remark with a view to which the preceding statement has been chiefly made. Whatever may be the justness of the complaints now preferred respecting the general principles on which the public affairs of the Province have been conducted, the representatives of the people of Upper Canada are at least not entitled to impute to the confidential advisers of the King any disregard of their remonstrances.—

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The greater part of the grievances detailed by the committee and the House, are now for the first time brought by them under His Majesty's notice. My predecessor, the Earl of Ripon, in his despatch of the 8th of November, 1832, to Sir John Colborne, was commanded by the King to state that "there was no class of the Canadian people, nor any individual amongst them, to whose petitions His Majesty did not require that the most exact and respectful attention should be given." His Majesty has never ceased to be actuated by the spirit which dictated those instructions, and of course will not deny to the House of General Assembly that careful investigation of the grounds of their complaints which he graciously pledged himself to bestow on the representation of any individual petitioner. I feel myself, therefore, entitled, on behalf of His Majesty's Government, to object to any resort on the part of the House to that ulterior measure to which they allude, but which they will feel with me is to be justified only by an extreme emergency.

I now proceed to the consideration of the various topics embraced in the seventh report of the Committee of Grievances, and in the addresses of the two Houses to His Majesty. And I shall advert to them in the order in which they are pursued in the report itself.

In the following pages if any subject should appear to be passed over without due regard, you will understand that I have, at least, been guilty of no intentional omission, but have, in obedience to His Majesty's commands, made it my endeavour to meet every question which the Committee and the House have thought it necessary and proper to raise.

1st. It is stated that "the almost unlimited extent of the patronage of the Crown, or rather of the Colonial Minister for the time being, and his advisers here, together with the abuse of that patronage, are the chief sources of colonial discontent. Such (it is added) is the patronage of the colonial office that the granting or withholding of supplies is of no political importance unless as an indication of the opinion of the country concerning the character of the government, which is conducted on a system that admits its officers to take and apply the funds of the colonists without any legislative vote whatever." The committee then proceed to an enumeration of the various public offices, and the different departments and branches of the public service, over which this patronage is said to extend; and by bringing the whole into one view, they suggest what must be the amount of the authority and influence accruing to the Executive Government from these sources.

The statement is substantially this—that the number of public offices in the colony is too great; and that the patronage, instead of being vested, as at present, in the crown, and the local representative of the crown, should be transferred to other hands.

In the long enumeration of places at the disposal of the Executive Government in Upper Canada the committee have not adverted to one consideration to which I think that great prominence might justly

be assigned. It is perfectly true, as it is quite inevitable, that in Upper Canada, as in other new countries, the number of public employments is, and will be, far larger in proportion than in older and more densely peopled states. The general machinery of government must be the same in a country as in a large and redundant population—corresponding departments of the public service, whether legislative, judicial, or administrative, must exist in both. And in a new country, besides, there will be some establishments for which in the settled states of Europe, no counterpart can be found. Such, for example, are all which relate to the allocation, surveying, and granting of wild lands. Nor is it to be forgotten, that in the early stages of such a society, many duties devolve upon the government, which, at a more advanced period, are undertaken by the better educated and wealthier classes, as an honorable occupation of their leisure time. Thus in the Canadas, although the mere text of the law would there as in England, authorise any man to prefer and prosecute an indictment in His Majesty's name, yet virtually and in substance the prosecution of all offences is confided to the government or its officers. These causes have inevitably tended to swell the amount of the patronage of the provincial government, without supposing any peculiar avidity on their part for the exercise of such power.

With respect to the patronage of the requisite officers, His Majesty's Government are not solicitous to retain more on their own hands, or in those of the Governor, than is necessary for the general welfare of the people and the right conduct of public affairs. I confess myself, however unable to perceive to, whom the choice amongst candidates for public employment could with equal safety be confided. It requires but little foresight or experience to discover that such patronage if exercised in any form of popular election, or if committed to any popular body, would be liable to be employed for purposes far less defensible, and in a manner less conducive to the general good, chosen by irresponsible patrons, the public officers would themselves be virtually exempt from responsibility, and all the discipline and subordination which should connect together in one unbroken chain the King and His Representative in the Province down to the lowest functionary to whom any portion of the powers of the State may be confided, would be immediately broken.

I conclude, therefore, that as in such a country as Canada, there must exist a number of public officers, large in proportion to the present number and wealth of the inhabitants, so the selection of them must for the most part be entrusted to the head of the local government.

I disclaim, however, on the part of the Ministers of the Crown every wish to urge these general principles beyond their just and necessary limits. There are cases in which I think according to the analogy of similar cases in this country, the patronage now said to be exercised by the Lieutenant Governor might with perfect safety and propriety, be transferred to others. On this subject, however, it will be

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more convenient to state the general principle than to attempt the specific and detailed application of it at this distance from the scene of action.

That principle is to maintain entire, by the nomination and removal of public officers, that system of subordination which should connect the head of the government with every person through whose instrumentality he is to exercise the various delegated prerogatives of the Crown.

What is necessary for this end must be retained.—Whatever patronage is unnecessary for the maintenance of this principle should be frankly and at once abandoned.

It is noticed in the report as an aggravation of the evils of the government patronage that almost every public officer holds his place at the pleasure of the Crown. I cannot disguise my opinion, that the public good would be little advanced if the subordinate functionaries held their places upon a more certain tenure. In practice indeed, though subject to certain exceptions to be hereafter noticed, no public officer is in danger of losing his employment except for misconduct or incompetency. But there are many kinds of misconduct and incompetency which could never be made the subject of judicial investigation but which yet would be destructive of the usefulness of a public officer, and ought therefore to be followed by a dismissal from the public service. Nor is it necessary to insist at any length on the evils, which would arise in the transaction of business if the subordinate officers were aware, that they were entirely independent of the good opinion of their superiors for continuance in their employments.

It is not difficult to show in reference to any conceivable arrangement on the subject of patronage, that there will be dangers against which it is impossible to take an absolute and perfect security. I know not, however, that any less exceptionable scheme could be devised than that which at present prevails, of giving to the head of the local government the choice of the subordinate officers, and of making their places dependent on His Majesty's pleasure. To prevent, however, as far as may be possible, the continuance of any well founded ground of complaint on this head, His Majesty disclaiming for himself and for his representative in the Province all desire to exercise with the view merely to patronage, the power of appointing public officers, is pleased to prescribe for your guidance the following rules:

First.—You will at the earliest opportunity enter into a diligent review of the offices in the appointment of the Crown and of the local government, as detailed in the report of the Committee, and the appendix, with a view to ascertain to what extent they may without impairing the efficiency of the public service, be reduced immediately and prospectively. You will report to me the result of your investigation, with such particular information as will enable His Majesty's Government to decide in each case on the expediency of adopting your recommendation.

Secondly.—If during the reference of that report to me, any occasion

your for the reduction of offices either by abolition or by consolidation, you will exercise your own discretion as to waiting for fresh instructions, or proceeding at once to the reduction. Any appointment, however, made under such circumstances, will be merely provisional. In case of the immediate abolition of any office not required for the efficient discharge of the public service, you will stipulate for such a compensation to the present holders, as the disappointment of their reasonable expectations may entitle them to receive.

Thirdly.—In the prescribed revision of these offices you will make it one of your objects to form a judgment what share of the patronage of the Crown or the Local Government may safely and wisely be transferred to other hands. You will report to me on this subject, but refrain from taking any steps regarding it without further instructions from me.

Fourthly.—In the selection of persons to execute public trusts you will be guided exclusively by the comparison of the claims, which the different candidates may derive from past services or from personal qualifications.

Fifthly.—In general you will not select for any public employment in Upper Canada any person who is not either a native or a settled inhabitant of the Province. To this general rule occasional exceptions may be admitted; as in cases where some peculiar art or science is demanded, which no provincial candidate may be found to possess in the requisite degree. An exception must also be made in reference to those officers, who are immediately attached to your own person; in the choice of whom His Majesty does not think it right to subject you to any such restriction.

Sixthly.—As often as any office shall be vacant, which is not to be suppressed, and of which the annual emolument shall exceed two hundred pounds, you will make the appointment provisional only, and with the distinct intimation to the party elected, that his confirmation will depend entirely on the estimate which His Majesty may form of his pretensions; and you will on every such occasion signify to me for His Majesty's information, the grounds on which you have proceeded, and the motives which have directed your choice. If His Majesty should be pleased to issue under his sign manual a warrant authorising you to make a grant of the office under the public seal of the Province, then and not till then, the appointment must be considered as finally ratified.

I trust, that in these regulations, the House of Assembly will perceive a sufficient proof of His Majesty's settled purpose to exercise this Branch of His Prerogative for no other end, than the general good of His Canadian subjects, and to prevent its being converted into an instrument of promoting any narrow, exclusive or party designs.

2d. Pursuing the order observed by the Committee, I pass on to the subject of the Provincial Post Office. Adverting to the measures which have already been taken for the redress of the grievances which have been alleged to exist in the conduct of this department, the Com-

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mittee observe, that "the form of a law such as the Government would approve is before the Houses, but its provisions (they add) are so inapplicable and absurd, that no benefit could be derived from their enactment."

On the measure thus characterized I am not called to give an opinion. It is, however, but fair to those by whom it was recommended to the adoption of the local legislature, to observe that it had previously undergone a most careful investigation by the Post Master General. His Majesty's government cannot have the slightest wish to urge the adoption of any measure to which well founded and sufficient objections may exist; they are content that the bill in question should be withdrawn to make way for any other which the Assembly may be disposed to substitute for it. Perhaps, however, on approaching the question more closely, the Assembly may find it encumbered with unexpected difficulties. I fear that this will be the case, especially in reference to the intercourse by post with all places beyond the limits of the Province itself. You will, however, assent to any judicious and practicable scheme which the House may incorporate in any bill tendered for your acceptance; regarding as of no weight whatever, when opposed to the general convenience of the public, any considerations of patronage or of revenue derivable from this source.

3d. Under the head of salaries and fees the committee have entered into very copious statements to shew that the emoluments of the public officers in Upper Canada are excessive, and out of all just proportion to the value of the services rendered. It is unnecessary for me to enter into these details, because as to the general principles on which it will be your duty to act on questions of this nature, there can be no room for controversy; indeed those principles will, I think, be most conveniently considered when divested of topics connected with the interests and the services of particular persons.

There is no measure of retrenchment compatible with the just claims of His Majesty's various officers, and with the efficient discharge of the public service and duty, to which the King is not disposed to give a prompt and cheerful assent. To determine what ought to be the scale of remuneration to public functionaries of different classes would require information too minute and exact to be obtained beyond the limits of the province itself. This would appear a very fit subject for a special enquiry, in which it might be proper to employ commissioners, to be appointed under the authority of an act of the Assembly.— I have reason to suppose that the subject has never yet undergone a full and fair investigation, and therefore I do not feel myself entitled to assume the non-existence of those abuses which so readily grow up under a system which is not subjected to a careful scrutiny, conducted upon permanent and enlightened views of public economy. Even if the result of the examination should be only to shew that there is no evil of this nature to be remedied, the labour would be amply repaid, by placing so important a fact beyond the reach of all reasonable suspicion.

In dealing with existing interests the local legislature will, I doubt not, be well disposed to adopt the rules which have been uniformly taken by Parliament for the guidance of their discretion in similar cases. The saving of public money which could arise from the unexpected reduction of official incomes would not only subject numerous families to extreme distress, but, by impairing general confidence in the public credit, would weaken the foundations on which all proprietary right must ultimately repose.

The King confidently relies on his faithful subjects of Upper Canada that they will not reduce His Majesty to the distressing alternative of either abandoning the just interests of any of his servants, or opposing himself to measures having for their object the reduction of public expenditure.

4th. Next in the order of complaints is that which relates to the amount of the Pension List. On this, as on the subject which I have last noticed, I conceive that I shall better discharge my duty by attempting to provide against any future abuse than by engaging in a minute retrospect of any which may have already occurred. I will not even pause on the comparison, not perhaps very accurately or necessarily instituted, between the conduct of the central government of the United States of America, and that which has been pursued in one of the Provinces of the British empire, respecting the remuneration of officers for past service. Such pensions as have already been charged upon the revenues which were at the disposal of the crown, constitute a debt to the payment of which His Majesty's honor is pledged, nor need I state that there is no consideration so powerful as to induce the King to assent to the violation of any engagement lawfully and advisedly entered into by himself or by any of his royal predecessors.

On the other hand His Majesty is content that the most effectual security should be taken against any improvident increase of the pension list by any future grants, and is willing that a limit should be fixed by law to any charge which may hereafter be imposed upon the provincial revenues on this account.

I do not anticipate that the Assembly of Upper Canada would wish to withhold from the King the means of rewarding faithful and zealous public services, or would think it desirable that no provision should ever be made by His Majesty to solace the declining years of those who have consumed in laborious public duties in the colony the larger portion of their lives.

You will therefore assent to any law which may be tendered for your acceptance of which the object shall be to regulate, on a just and reasonable scale, the amount of the future pension list of Upper Canada, and to prescribe the principles upon which any pensions shall be granted.

5th. I proceed to the subject of the provision made for ecclesiastical establishments and for the maintenance of the teachers of religion of various denominations.

On this head the House of Assembly maintain opinions from which in their address to His Majesty of the 13th April, the Legislative

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Council have recorded their most entire and earnest dissent. The report states that "the House of Assembly in several successive parliaments has expressed its entire disapprobation of the government in attempting to uphold particular religious sects by money grants, and in the 10th and 11th parliaments has declared that it recognizes no particular denomination as established in Upper Canada, with exclusive claims, powers, or privileges."

It appears that the four religious communities whose funds are aided by grants from the hereditary and territorial revenue are, those of the churches of England, and Scotland, and Rome, and of the Wesleyan Methodist Society; the last being in two divisions, which respectively take the distinct appellation of the "Canadian" and "the British."

In the last session of the provincial parliament a bill was passed by the Assembly, the object of which was to enable certain commissioners to sell the lands which, under the constitutional act of 1791, had been appropriated in Upper Canada to the maintenance of a protestant clergy, and to pay over the proceeds to the Receiver General, to be disposed of under the future direction of the legislature, for the promotion of education, and for no other purpose whatever.

This bill was rejected by the Legislative Council on the grounds noticed in the address from that body to His Majesty, and in a report from a select committee appointed by them to take the bill into consideration, which report is inclosed in Sir John Colborne's despatch of the 20th May, No. 20.

Your predecessor and the council agree in the opinion, that it is vain to expect the concurrence of the two branches of the local legislature in any adjustment of this question, and they therefore invoke the interposition of parliament; which interposition the Assembly on the other hand, deprecate with equal earnestness.

The chief practical question then, which at present demands consideration, is whether His Majesty should be advised to recommend to parliament the assumption to itself of the office of deciding on the future appropriation of these lands. There are two distinct reasons, both of which appear to me conclusively to forbid that course of proceeding.

First.—Parliamentary legislation on any subject of exclusively internal concern, in any British colony possessing a representative assembly, is, as a general rule, unconstitutional.

It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception. But important as is the question of the Clergy Reserves in Upper Canada, yet I cannot find in the actual state of the question any such exigency as would vindicate the Imperial Legislature in transferring to themselves the settlement of this controversy. The conflict of opinion between the two Houses upon this subject, much as it is to be lamented, yet involves no urgent danger to the peace of society, and presents no insuperable impediment to the ordinary administration of public affairs; although a great evil, it is not such as to exclude every hope

of mitigation by the natural progress of discussion, and by the influence of that spirit which, in public affairs, not seldom suggests to parties, alike solicitous for the general good, some mutual surrender of extreme views and some compromise on either side of difference, which at first sight might have appeared irreconcilable.

Until every prospect of adjusting this dispute within the Province itself shall have been distinctly exhausted, the time for the interposition of Parliament will not have arrived, unless, indeed, both Houses shall concur in soliciting that interposition; in which event, there would of course, be an end to the constitutional objections already noticed.

The second ground on which I think myself bound to abstain from advising His Majesty from referring this question immediately to Parliament, is that the authors of the Constitutional Act, have declared this to be one of those subjects, in regard to which the initiative is expressly reserved and recognized as falling within the peculiar province and the special cognizance of the local Legislature, although its ultimate completion is no less distinctly made to depend, in addition to the ordinary submission to His Majesty, on the acquiescence of the Imperial Parliament.

It is not difficult to perceive the reasons which induced parliament in 1791, to connect with a reservation of land for ecclesiastical purposes the special delegation to the Council and Assembly of the right to vary that provision by any bill, which being reserved for the signification of His Majesty's pleasure, should be communicated to both houses of parliament for six weeks before that decision was pronounced. Remembering, it should seem, how fertile a source of controversy ecclesiastical endowments had supplied throughout a large part of the christian world, and how impossible it was to foretell with precision what might be the prevailing opinions and feelings of the Canadians on this subject at a future period, parliament at once secured the means of making a systematic provision for a protestant clergy and took full precaution against the eventual inaptitude of that system to the more advanced stages of a society then in its infant state, and of which no human foresight could divine the more mature and settled judgment.

In the controversy, therefore, respecting ecclesiastical endowments which, at present divides the Canadian legislature, I find no unexpected element of agitation, the discovery of which demands a departure from the fixed principles of the constitution, but merely the fulfilment of the anticipation of Parliament in 1791 in the exhibition of that conflict of opinion for which the statute of that year may be said to have made a deliberate preparation. In referring the subject to the future Canadian Legislature, the authors of the constitutional act must be supposed to have contemplated the crisis at which we have now arrived—the era of warm and protracted debate, which in a free government may be said to be a necessary precursor to the settlement of any great principle of national policy. We must not have recourse to an

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extreme remedy merely to avoid the embarrassment, which is the present, though temporary result of our own deliberate legislation.

I think therefore, that to withdraw from the Canadian to the Imperial Legislature the question respecting the Clergy Reserves would be an infringement on that cardinal principle of colonial government which forbids parliamentary interference, except in submission to an evident and well established necessity.

Without expressing any further opinion at present on the general objects of the bill of last session, I think the effect of that bill would, as it appears, have been to constitute the Assembly not merely the arbiters respecting the disposal of the funds to be raised by the sale of these lands, but the active and independent agents in effecting those sales, and thus to invest them with the appropriate functions of the Executive Government.

6th. The Report of the Committee next proceeds to the subject of the Land Granting Department.

Admitting that Lord Ripon's Despatch shews that the grievances under this head have been in part removed, it is observed that the extent of that relief is not very clearly shown by the documents before the Committee.

It is difficult, or rather impossible for me to advance further in meeting the views of the Assembly thus briefly expressed, than by stating that if any ambiguity can be pointed out in Lord Ripon's instructions respecting the grant of Lands, it shall be immediately removed, and that if His Majesty's officers in the Province can be shewn to have disregarded those instructions, it will be your duty to enforce most prompt and exact obedience to them, to the full extent of their spirit and intention; insomuch that there shall in future be no doubt, whether the grievances at which they aimed have or have not been completely removed.

7th. Respecting the Collegiate Institutions of the Province, the Assembly express their opinion, that the Upper Canada College "is upheld at great public expense, with high salaries to its principal Masters, but that the Province, in general, derives very little advantage from it, and that it might be dispensed with."

His Majesty's Government can have no wish to retain any charge for this establishment which may be more than adequate to provide for the effective performance of the duties of the Teachers. Any wise retrenchment of that nature may, subject to the principles already mentioned, be immediately introduced. That the Province derives little benefit from this College is a fact of which the explanation is to be found, not in the principle of the institution itself, but in some error of management, susceptible, as it should seem, of an easy remedy. It is impossible to believe, that in Upper Canada, as in other countries, advantages the most important, would not result from a well ordered school, for the education in the elementary branches of Philosophy, Science and Literature of young men, who aspire to fill the highest offices in society. Nor can I suppose it a light benefit thus to connect

together the preparatory and the final studies of youth in one systematic plan, which by rendering the initiatory school a careful preparation for the University may give to their entire education a character of solidity and consistency scarcely attainable by any other method.

I shall therefore deeply lament the abolition of a College, of which the defects would appear so remediable, and of which it does not seem easy to exaggerate the benefits.

On the subject of King's College an unfortunate difference of opinion exists between the Council and the Assembly, which each of those bodies concurs in pronouncing incurable.

His Majesty commands me to tender through you his mediation on this subject. With the previous assent of both Houses, the King will cheerfully resume the consideration of the question, in what manner a charter could be most conveniently prepared, so as to promote the interests of Science and Literature, and the study of Theology and Moral Philosophy, with a due regard to the opinions which seem to prevail in the Province, respecting the proper constitution and objects of an University. But after having distinctly referred to the local legislature the duty of giving effect to their own wishes on the subject in the form of an act of general Assembly, His Majesty cannot at the instance of one only of the two Houses, withdraw it from their cognizance.

8th. The committee complain that a very considerable portion of the sum amounting to £31,728 18 11 expended in aid of emigration from Europe, was for "articles or services not specified, and concerning which a committee of the House of Assembly could know nothing unless they were to send for the detailed accounts and vouchers, which if they had it would be impossible to examine at this late period of the session at which the government sent down those statements." In the Appendices to the Report, numbered 56 and 57, various items of this expenditure are noticed with apparent dissatisfaction. You will direct the public officers who have had the management of this fund to communicate to the House of Assembly, with the utmost possible promptitude, the most minute and circumstantial details and explanations connected with it, for which the House may be pleased to call.

9th. Next in order occurs the statement, that "the present system of auditing the public accounts is altogether insufficient for ensuring the application of the revenue to the purposes to which it is intended to be applied."

The remedy suggested is that of establishing a Board of Audit, of which the proceedings should be regulated by a well considered statute under a responsible government.

Deferring at present any remark on the expression "responsible Government," to which I shall more conveniently advert hereafter, I must express my agreement in the position that the establishment of a Board of Audit by law is the best remedy in this case. His Majesty will gladly concur in the enactment of any law, which shall be properly framed for constituting such a Board. With a view to aid the

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deliberations of the Legislature, I transmit to you various documents explanatory of the constitution and proceedings of the commission for auditing the public accounts in this Kingdom.

The Assembly express their disbelief that any efficient measure of this kind will obtain the consent of the Legislative Council. I trust that this apprehension will be dispelled by the event. If unfortunately it should be confirmed, you will in the exercise of His Majesty's delegated authority, proceed at once to constitute a Board of Audit upon the principles of that which at present exists in this kingdom, so far as the two cases may be analogous; and although I am aware that, unaided by positive Legislation, such a board would be comparatively inefficient, yet no inconsiderable advance would thus be made towards the introduction of an effective system of audit.

If you should find it necessary to act on this instruction, great care must be used to prevent the new establishment from being converted into the means of any real or seeming abuse in the way of an improvident increase of the patronage of the Crown. Of a Board consisting of five or three auditors, one alone should at first receive a salary, because the institution itself would be provisional only, and liable to revision so soon as a proper act could be passed for the purpose. I think it highly probable that amongst the gentlemen of the Province most conversant with its financial interests, a sufficient number would be found, who as honorary and unpaid commissioners would complete the board, and who though not engaging in the mere ordinary routine of business would exercise a general superintendence over the more important proceedings of the commission. Especially it would be requisite to obtain such aid in determining the number and remuneration of the clerks and other subordinate officers. But it must not be forgotten that the effective remedy as the report observes, is to be found in a board established by law, & I earnestly hope that a law to that effect may pass both Houses of the Legislature.

10th. The withholding of public accounts from the House of Assembly is the next ground of complaint.

It is proposed, that to remedy this evil, a statute should be passed providing the time and manner of making such returns, and naming the officers, who should render them to the Legislature; "but," add the committee, "it is well known that such an enactment would fail in the Council, which has an interest in preventing the enforcement of practicable accountability to the people."

Although I cannot permit myself to believe, that the Council would really oppose themselves to any judicious measure of this kind, I fear that such legislation would be found to involve many serious, if not insuperable difficulties. I must object to the appointment of individuals for any purpose of this kind by name in a statute, or by an authority other than that of the King. Persons so appointed would exercise a control over all the functions of the Executive Government, and would have a right of inspecting the records of all public offices to such an extent as would leave His Majesty's representative, and all

other public functionaries, little more than a dependent and subordinate authority. Further such officers would be virtually irresponsible and independent.

On this subject, however, His Majesty commands me to state, that there is no information connected with the receipt and expenditure of any part of the revenue of Upper Canada, which he wishes to withhold from the representatives of the Canadian people.

You will immediately on your arrival in the Province apprise the heads of every public department, by which any such funds are received or administered, that they must constantly keep in preparation to be produced to the Assembly in compliance with any addresses which may be presented to you by that House, copies and abstracts of all public accounts, and you will consider, in what form these can be drawn up so as to exhibit all material information, in the most complete and luminous manner. It will perhaps be possible to concert with the House beforehand some system for preparing such returns; and as often as they may present to you addresses for such information, you will promptly accede to their wishes, except in the extreme case, which it is difficult to suppose, of any demand of that nature being made in such a form that the compliance with it would endanger some great public interest.

11th. The report then passes to the consideration of cases to which your predecessor is charged with having failed to show respect, even in subordinate matters to the wishes of the House of Assembly.

I will not encumber this communication by entering into a review of the particular transactions noticed by the committee in illustration of this complaint. I am not indeed sufficiently in possession of the facts to enable me to do so; nor do I think it convenient to combine a personal discussion, with a general statement of the principles by which your conduct is to be governed.

The only general direction that I have to give you on this subject is that you will always receive the addresses of the Assembly with the most studious attention and courtesy.—As far as may be consistent with your duty to the King, you will accede to their wishes cheerfully and frankly.

Should that duty ever compel you to differ from their opinion or to decline compliance with their desires, you will explain in the most direct and, of course, in the most conciliatory terms the grounds of your conduct.

12th. The next topic of complaint is that many of the recommendations contained in Lord Ripon's despatch of the 8th Nov., 1832, have not been carried into effect. Amongst these are especially mentioned such as relate to the amendment of the Election Laws:—the non-interference of His Majesty's Officers at Elections:—

The disclosure to the House of the receipt and expenditure of the Crown Revenue:—The exclusion of Ministers of Religion from the Legislative and Executive Councils:—The reducing the costs of Elec-

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tions:—The judicial independence: and the limitation of the number of public officers, who may sit in the Assembly.

Adhering without reserve or qualification to all the instructions issued under His Majesty's commands by Lord Ripon, the King is pleased to direct, that you do adopt that Dispatch as a rule for the guidance of your own conduct, and that you exert your legitimate authority and influence to the utmost possible extent to carry into effect all such of His Lordship's suggestions, as may still continue unfulfilled.

13th. The selection of Justices of the Peace is said to have been made chiefly from persons of a peculiar bias in politics, and to be the means "of extending the power and influence of the Colonial System." It is not in my power to verify the accuracy of this opinion; and I am happy to feel myself relieved from the necessity of such an investigation. If any such abuse exists, it cannot be too decisively or promptly remedied. Whenever any increase of the number may appear to you desirable, you will propose to any gentlemen in Upper Canada possessing the necessary qualifications of knowledge, property and character and unquestionable fidelity to the Sovereign, the assumption of the office of the Justice of the Peace without reference to any political consideration.

14th. A very considerable part of the report is devoted to the statement and illustration of the fact, that the Executive Government of Upper Canada is virtually irresponsible; and the conclusion drawn from this statement is, that under the present system there can be no prospect of a good and faithful administration of public affairs.

Without entering on the one hand unnecessarily into a discussion of those general principles, to which my attention is thus invited, or digressing on the other hand into personal topics, it is enough for me to observe on the present occasion, that experience would seem to prove that the administration of public affairs in Canada is by no means exempt from the control of a sufficient practical responsibility. To His Majesty and to Parliament the Governor of Upper Canada is at all times most fully responsible for his official acts.

That this responsibility is not merely nominal, but that His Majesty feels the most lively interest in the welfare of his Canadian subjects, and is ever anxious to devote a patient and laborious attention to any representations, which they may address to him, either through their representatives or as individuals, is proved not only by the whole tenor of the correspondence of my predecessors in this office but by the despatch which I am now addressing to you.

That the Imperial Parliament is not disposed to receive with inattention the representations of their Canadian fellow subjects, is attested by the labours of the committees, which have been appointed by the House of Commons during the last few years to enquire into matters relating to those provinces.

It is the duty of the Lieutenant Governor of Upper Canada to vindicate to the King and to Parliament every act of his administration. In the event of any representations being addressed to His Majesty

upon the subject of your official conduct, you will have the highest possible claim to a favourable construction; but the presumptions which may reasonably be formed in your behalf will never supersede a close examination, how far they coincide with the real facts of each particular case which may be brought under discussion.

This responsibility to His Majesty and to Parliament is second to none, which can be imposed on a public man, and it is one, which it is in the power of the House of Assembly, at any time by address or petition, to bring into active operation.

I further unreservedly acknowledge that the principle of effective responsibility should pervade every department of your government; and for this reason, if for no other, I should hold that every public officer should depend on His Majesty's pleasure for the tenure of his office. If the head of any department should place himself in decided opposition to your policy, whether that opposition be avowed or latent, it will be his duty to resign his office into your hands; because the system of government cannot proceed with safety on any other principle than that of the cordial co-operation of its various members in the same general plans of promoting the public good. The inferior members of the different offices should consider neutrality on this great litigated question of Provincial policy as at once their duty and their privilege. Diligently obeying all the lawful commands of their superiors, they will be exempted from censure, if the course, which they have been directed to pursue, should issue in any unfortunate results.

Some of the members of the local government will also occasionally be representatives of the people in the Assembly, or will hold seats in the Legislative Council.

As members of the local Legislature they will of course act with fidelity to the public, advocating and supporting no measures, which upon a large view of the general interest, they shall not think it incumbent on them to advance. But if any such person shall find himself compelled by his sense of duty to counteract the policy pursued by you as the head of the government it must be distinctly understood, that the immediate resignation of his office is expected of him, and that failing such resignation, he must as a general rule be suspended from it. Unless this course be pursued, it would be impossible to rescue the head of government from the imputation of insincerity; or to conduct the administration of public affairs with the necessary firmness and decision.

I need hardly say, that in the event of any public officer, being urged into a resignation of his place by his inability to give a conscientious support to his official superior, the merits of the question would undergo an investigation of more than common exactness by His Majesty's Ministers, and that His Majesty's decision would be pronounced with a perfect impartiality towards those who had the honor to serve him in the Province, however high or however subordinate might be their respective stations.

By a steadfast adherence to these rules, I trust that an effective sys-

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tem of responsibility would be established throughout the whole body of public officers in Upper Canada, from the highest to the lowest, without the introduction of any new and hazardous schemes, and without recourse to any system, of which the prudence and safety have not been sufficiently ascertained by a long course of practical experience.

14th. I next advert to two subjects of far more importance than any of those to which I have hitherto adverted. I refer to the demand made partly in the report of the Committee, and partly in the address from the Assembly to His Majesty, for changes in the mode of appointing Legislative Councillors, and for the control by the Assembly of the Territorial and Casual Revenues of the Crown.

On these subjects I am to a considerable extent relieved from the necessity of any particular investigation, because claims precisely identical have been preferred by the Assembly of Lower Canada, and because in the instructions to the Commissioners of Enquiry who have visited that Province, I have already had occasion to state the views which have received His Majesty's deliberate sanction. The principles of the government in the two Sister Provinces must I am well aware be in every material respect the same. I shall therefore, annex for your information as an appendix to this Despatch so much of the instructions to the Earl of Gosford and his colleagues, as applies to these topics.

In the prosecution of the enquiries of the Commissioners in Lower Canada, they will be instructed to enter into full and unreserved communication with you upon these questions, and to frame their report in such a manner as may enable His Majesty to adopt a just and final conclusion upon the course to be pursued respecting them in both the Canadas: For this purpose you will supply the Commissioners with all the information which you may think necessary for them to receive, and with every suggestion which you may think it expedient to make for their assistance in comparing the state of these questions in the two Provinces. If it should ultimately appear desirable, the Commission may perhaps be directed to resort to Upper Canada, there to pursue in concurrence with yourself, a more exact enquiry into these subjects than they could institute at Quebec, in reference to the affairs of the Upper Province.

In general the Earl of Gosford and his colleagues will be directed to enter into unreserved communication with you, not only on the points just mentioned, but on every subject of common interest to the two Provinces.

You on your part will conduct yourself towards them in the most cordial spirit of frankness and co-operation.

I have thus in order adverted to every subject to which the Assembly of Upper Canada have called the attention of His Majesty's Government.

You will communicate to the Legislative Council, and to that House, the substance of this Despatch as containing the answer which His

Majesty is pleased to make to the addresses and representations, which I have the honor to lay before him from the two Houses in their last Session.

I trust that in this answer they will find sufficient evidence of the earnest desire, by which His Majesty's Councils are animated to provide for the redress of every grievance, by which any class of His Majesty's Canadian subjects are affected.

I close this communication with the expression of my earnest hope, and I trust not too confident belief, that the representatives of the people of Upper Canada will receive with gratitude and cordiality this renewed proof of His Majesty's paternal solicitude for the welfare of his loyal subjects in that Province, and that laying aside all groundless distrusting, they will cheerfully co-operate with the King and with you as His Majesty's Representative in advancing the prosperity of that interesting and valuable portion of the British empire.

I have the honor, &c.

GLENELG.

APPENDIX.

EXTRACT FROM DESPATCH TO THE COMMISSIONERS FOR LOWER CANADA, DATED,

Downing Street, 17th July, 1835.

"Amongst the most pressing of these, is the financial question which has given rise to so protracted a controversy.

"After the several gradations through which this question has passed, it has at length assumed the following shape: As representatives of the people of Lower Canada, the House of Assembly claim the right of appropriating to the public service, according to their own discretion, the whole of the revenues of the Crown accruing within the Province. The claim extends to the proceeds of all parliamentary and provincial statutes, whatever may have been the original conditions of these grants;—to the funds drawn from the sale of timber and of the waste lands of the Crown;—to all fines and forfeitures;—and to the income derived from the Seigniorial rights inherited by the King from his royal predecessors. In fine, the authority of the local Legislature over the income and expenditure of the Province is declared to be so extensive, as to embrace every part of that receipt and outlay: and so inalienable as to supersede even the concessions deliberately

made in people.

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made in preceding times by the former representatives of the Canadian people.

"Without pausing to discuss the great constitutional questions which these claims involve, I content myself with referring to the undoubted fact, that the Kings of England have at all times been, in right of their Crown, in possession of certain sources of revenue peculiarly their own, and of which they could not be divested, except by their own consent. In modern times, as is well known, the control of parliament over this revenue in these Kingdoms, has been established on the accession of each Sovereign to the throne, by a solemn compact made between the Crown and the Houses of Lords and Commons. If therefore, the King were disposed to insist upon positive law, ancient practice, or constitutional analogy, His Majesty might readily vindicate his right to dispose of the territorial, hereditary, and casual revenue of the Crown, arising in Lower Canada, towards the maintenance of the civil government in that part of his dominions. But, anxious to render his reign a blessing to his Canadian subjects, His Majesty is prepared to decline taking this ground, and to refer the decision of the question to the single test of the advantage or disadvantage to the Province, with which the proposed cession would be attended. It would be difficult to imagine any pecuniary sacrifice which would not be wisely incurred in purchasing a peaceful settlement of the dissensions of the last fifteen years.

"If pecuniary interests alone were at stake, the King would not hesitate to make this cession permanently and without condition. They must ill indeed have understood the character and policy of the British Government, who may have supposed, that the peace and well-being of this great Empire has been put to hazard in a prolonged contest with the most valuable of its foreign dependencies, for the sake of a sum of money so insignificant, as to be scarcely perceptible in the financial operations of Great Britain, and of no considerable amount even in these of Lower Canada.

"During the progress of this controversy, there have been expended by parliament for objects altogether Canadian, sums, compared with which, the utmost demand that has been made on the liberality of the House of Assembly, for the support of the Executive Government of the Province, is altogether trivial. The real importance of connecting the surrender of the hereditary and territorial revenue with some reservation or conditions for the support of the civil government, and for the administration of justice, rests upon grounds far higher than any which could be brought to a pecuniary measurement. There are objects, essential, as it would seem, to the welfare of His Majesty's Canadian subjects, which could not probably be secured if that surrender were made unconditionally. In this view of the question, His Majesty is bound not to relinquish the appropriation of funds which the law and the Constitution have placed at his disposal, without making a stipulation suggested exclusively by his care for the common benefit of his people.

"Amongst the foremost of the objects which His Majesty is thus bound to rescue from a precarious support, are, the independence of the Judges and the pure administration of the law. From the commencement of his reign, it has been the constant and persevering effort of His Majesty to render the Judges of the Superior Courts in Lower Canada, independent alike of the Crown, for the tenure of their offices, and of the representatives of the people for their annual emoluments. In the various documents already noticed, you will find the history of those attempts, and a full explanation of the causes to which their failure is to be ascribed; yet a review of the Journals of the Assembly will, I think, convince you, that between that House and His Majesty's government, no real, or at least no irreconcilable difference of opinion exists on this subject;—on the contrary, you will find, that respecting the general principles on which we must proceed, a perfect unanimity has prevailed. It is fully admitted that the Judges ought to hold their offices, not at the pleasure of the King, but during good behaviour, and that their official incomes should be paid, not at the pleasure of the popular branch of the Legislature, but from adequate funds, to be irrevocably pledged for that purpose. With respect to the erection of a tribunal for the trial of impeachments preferred against the Judges, no plan has been suggested, nor consistently with the principles of the Constitution of the Province, could any scheme be devised, excepting that of bringing such Judges to trial before the Legislative Council, or before His Majesty, acting on the advice of the judicial committee of the Privy Council in this kingdom. Impartiality, with a perfect exemption from all local influences, is the first and essential attribute of any court which may be invested with such powers, and as the King cannot indulge any reasonable hope of finding those qualities combined in any tribunal within the Province itself (unless perhaps in the Legislative Council) His Majesty is not prepared to assent to any scheme divesting himself, acting upon the constitutional advice of his privy council, of the authority which has ever been exercised by the Kings of this realm, on occasions of the same nature, and since the earliest settlement of the colonial portion of the British dominions.

"This then will be one of the subjects of your earliest enquiry; and you will endeavour to suggest the plan of a law, in which there may be good ground to anticipate the concurrence of the House of Assembly, for the security of judicial independence. If this can be effected, one of the chief difficulties which might otherwise obstruct the cession of the revenues will be overcome.

"The regard which it is His Majesty's duty to maintain for the welfare of the people of Lower Canada appears to forbid a surrender of the revenues of the Crown in that Province to the appropriation of the Legislature, unless some condition be further made for the support of the Executive Government by an adequate civil list.

"I pass over without any direct notice the grounds on which the contending parties in the Province have, on the one hand, urged the ne-

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necessity of such a stipulation, and on the other hand denied that it could be safely or constitutionally admitted. You will readily learn from various public documents which will be pressed upon your attention in the Province itself, what are the arguments to which I refer. I cannot, however, abstain from recording in this place the principal considerations which appear to make it necessary that the concession about to be made to the Provincial Legislature should be qualified by the demand of a proper Civil List.

"A constant altercation between the House of Assembly and the Executive Government, on the subject of the official emoluments of the chief officers of the crown, would be derogatory to the character of those officers, and especially of the Governor, representing the person clothed with the delegated prerogatives of the King. The tendency of such controversies would unavoidably be to introduce a disesteem for those functionaries by exhibiting them in the light of pensioners on the reluctant bounty of the representatives of the people; although the common welfare of society evidently requires that they should rather be respected as the ministers of the King; exercising under a just responsibility indeed—but yet with freedom and independence, the powers confided to them for the public good.

"The continued agitation of a subject so capable of being placed in an invidious light, could scarcely be compatible with the tranquil and steady progress of those most important branches of the public business with which the higher functionaries of the government are charged. It would also be directly injurious to them and therefore to the Society at the head of which they are placed, thus to give an habitual and offensive prominence to the remuneration they were receiving, and in the same degree to divert public attention from the services by which that pecuniary reward was earned.

"The security which the Governor and his principal Officers would derive from the grant of a Civil List, would strengthen the connection subsisting between Canada and the other members of the British Empire. It would be a distinct recognition of the principle that the administration of the affairs of the Province by a Governor and officers appointed by the King, is a substantial and essential part of the Provincial Constitution. To debate from year to year whether grants shall or shall not be made for the support of such functionaries, might almost seem to involve a tacit assumption that the existence of such offices was itself a question open to annual revision.

"In so remote a part of His Majesty's dominions it is especially necessary that the Royal authority as represented by His Majesty's officers should be most distinctly admitted as one of the component and inseparable principles of the social system.

"Nor are the motives, by which the independence of the Judges has been recommended by the King and admitted by the Assembly inapplicable to the case of the principal officers of the local government.—They have frequently unpopular duties to perform; they are not seldom called to oppose the passions and emotions of the day; and for

the permanent well being of society, to brave the displeasure of popular leaders. They should, therefore, be raised above all influence, and all suspicion of influence of unworthy fear or favour. The interests of freedom and of good government require that those upon whose firmness and constancy the maintenance of order and the authority of the laws mainly depend, should not be looking for their subsistence to the favor of a body which necessarily reflects most of the fluctuating movements of the public mind. Such are the principal motives which induce me to conclude, that the King could not consistently with the interests of His Canadian subjects, relinquish, except in return for an adequate civil list, the control which His Majesty at present exercises over the hereditary and territorial revenue.

"It will be for you to consider and report what ought to be the precise terms of this stipulation. A temporary cession of the revenue in return for a provision for the chief public officers of the Province for a corresponding period, would be the most satisfactory arrangement. In the rapid progress of settlement in the Canadian Provinces a few years will probably be productive of changes, demanding a corresponding alteration in the terms of any adjustment concluded at the present period; and a decennial revision of the compact now to be made would seem best calculated to secure those public benefits and avert those public evils by the hope or fear of which the compact itself is recommended.

"If however a temporary settlement to be renewed from time to time, should prove impracticable, or upon a closer consideration of the subject should seem to you inexpedient, you will then consider in what manner the inconveniences inseparable from the permanent adjustment of such a question can be most effectually mitigated or avoided.

"The opponents of the claims preferred by the House of Assembly to the control of the Territorial revenue insist with peculiar emphasis that the necessary effect of yielding to this claim would be to transfer from the executive gov't to the popular branch of the legislature the management of the uncleared territory asserting that the assumption of this duty by the House of Assembly would be most injurious to the agricultural and financial interests of Lower Canada.

"Were the right of appropriating the Revenue arising from the Crown Lands and the charge of their management indissolubly connected, I should admit this reasoning to be correct. The objections to the combination in the same hands of a large share of the legislative power with so important a branch of the executive authority, are too obvious to escape your notice; and I therefore may, without inconvenience, abstain from a particular explanation of them. It may be sufficient to say, that His Majesty's confidential advisers regard as conclusive, and unanswerable, the objections which are made to confiding the management of the uncleared territory of Lower Canada, to either or both of the Houses of General Assembly, or to persons appointed by them and subject to their control. In the distribution of the different powers of the state the office of settling and alienating the uncleared terri-

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It is competent to the Legislature upon this, as upon other subjects, to lay down general rules for the guidance of the Executive authorities, or either branch of the Legislature may separately offer its advice to the Crown as to the policy and system of management, which it thinks should be pursued; but the practical application of such general rules and the charge of carrying into effect the system of management which may be approved are functions so strictly of an executive and administrative character, that they can only be properly discharged by those, in whose hands all similar powers are lodged by the Constitution. Nor am I aware of any ground on which a surrender of that trust could be properly required from His Majesty, or which would justify the resignation of it by the King.

EXTRACT OF DESPATCH TO THE CANADA COMMISSIONERS, DATED,

17th July, 1835.

"In the 92 resolutions of the Session of 1834, in the address to His Majesty of that year, and in the address adopted in the Session which closed abruptly in the commencement of the present year, the constitution of the Legislative Council was insisted upon as the chief and prominent grievance in the whole system of Provincial Government. To the discussion of this subject, nearly half of those resolutions and of those addresses are devoted; and the Assembly in the most decided language, have declared that all remedial measures will be futile and unsatisfactory which should stop short of rendering the seats in the Legislative Council dependent on a popular election.

"The petitioners of Quebec and Montreal, on the other hand, deprecate with equal earnestness any departure from the principle on which the appointment of the Members of the Legislative Council is regulated by the Act of 1791, and denounce any such change as pregnant with the most formidable evils.

"The King is most unwilling to admit, as open to debate, the question whether one of the vital principles of the Provincial Government shall undergo alteration. The solemn pledges so repeatedly given for the maintenance of that system, and every just prepossession derived from Constitutional usage and analogy, are alike opposed to such innovations, and might almost seem to preclude the discussion of them.

"But His Majesty cannot forget that it is the admitted right of all His subjects to prefer to him, as the King of these realms, their petitions for the redress of any real or supposed grievances. His Majesty especially recognizes this right in those who are themselves called to the high office of representing a large and most important class of his people.

"The acknowledgment of this right appears to the King, to imply

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on his own part, the corresponding duty of investigating the foundations of every such complaint. His Majesty therefore will not absolutely close the avenue to inquiry, even on a question respecting which he is bound to declare, that he can for the present perceive no reasonable ground of doubt. His Majesty will not refuse to those who advocate such extensive alterations, an opportunity of proving the existence of the grievances to which so much prominence has been given.

"The King is the rather induced to adopt this course, because His Majesty is not prepared to deny that a statute which has been in effective operation for something less than forty-three years, may be capable of improvement, or that the plan upon which the Legislative Council is constituted may possibly in some particulars, be usefully modified, or that in the course of those years some practical errors may have been committed by the Council, against the repetition of which adequate security ought to be taken.—Yet if these suppositions should be completely verified, it would yet remain to be shown, by the most conclusive and circumstantial proof, that it is necessary to advance to a change so vital as that which is demanded by the House of Assembly.

"It must be recollected that the form of provincial constitution in question is no modern experiment nor plan of government in favor of which nothing better than doubtful theory can be urged.—A council, nominated by the King, and possessing a co-ordinate right of legislation with the representatives of the people, is an invariable part of the British colonial constitution in all the transatlantic possessions of the crown, with the exception of those which still remain liable to the legislative authority of the King in council.—In some of the colonies it has existed for nearly two centuries. Before the recognition of the United States as an independent nation, it prevailed over every part of the British possessions in the North American continent, not comprised within the limits of colonies founded by charters of incorporation.—The consideration ought indeed to be weighty which should induce a departure from a system recommended by so long and successful a course of historical precedent. To the proposal made by that body to refer the consideration of this question to public conventions, or as they are termed, primary meetings, to be holden by the people at large, in every part of the Province, His Majesty commands me to oppose His direct negative. Such appeals are utterly foreign to the principles and habits of the British Constitution, as existing either in this kingdom or in any of the foreign dependencies of the Crown.

"You will therefore apply yourselves to the investigation of this part of the general subject, and endeavoring to ascertain how far the Legislative Council has really answered the original objects of its institution, and considering of what amendments it may be susceptible. It is His Majesty's most earnest hope and trust, that in the practical working of the constitution of the Province, there will be found to exist no defects which may not be removed by a judicious exercise of those powers which belong to the Crown, or which Parliament has committed to the Provincial Legislature.

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"When your Report shall have been received, His Majesty will take into His most serious consideration, the question whether there are any amendments in the Law on this subject, which it would be fit to propose for the consideration of the Imperial Legislature; and which being founded on the principles and conceived in the spirit of the Act of 1791, may be calculated to render the practical operation of the statute more conformable to the wishes and intentions of its framers."

(A true copy.)

J. JOSEPH.

LORD GODERICH'S DESPATCH.

Downing Street, 8th Nov., 1832.

Duplicate, No. 162.

SIR,—During several months past I have been in occasional communication with Mr. William Mackenzie, upon the subject of the Grievances said to exist in Upper Canada, and for redress of which various petitions have been addressed to His Majesty.

As Mr. Mackenzie has been the bearer of those petitions to this country, I have gladly availed myself of his residence here to obtain such information as it is in his power to give respecting the opinions & wishes of that portion of the inhabitants of the Province by whom he has been deputed to act, and although I have adhered to the general rule of declining to explain the views of His Majesty's Government, on questions of Canadian policy, to any person except the Governor of the Province, I have been anxious to afford Mr. Mackenzie the most ample opportunity of doing justice to the case which he laid before me.

From the voluminous mass of that gentleman's correspondence, I have selected three documents which profess to embody the entire substance of that case as it affects the present condition of Upper Canada: of these documents I have the honor to enclose copies for your information.

I propose in this Despatch to follow Mr. Mackenzie through those parts of his statement respecting the representation of the inhabitants in the House of Assembly, which appear to me essential to the consideration of the practical questions he has undertaken to agitate. But confiding myself to what I consider as really relevant, I shall necessa-

rily pass over in silence some details which have been introduced with no perceptible tendency to elucidate the subjects in discussion, and much invective and sarcasm which would have been far more conveniently spared.

It is with no intentional disrespect to Mr. Mackenzie that I remark that he has adopted a style and method of composition singularly ill adapted to bring questions of so much intricacy and importance to a definite issue; but however discursive may be his papers, or however acrimonious their tone, I am not on that account disposed to withhold my attention from any useful suggestions they may contain for the public good.

I am the more induced to devote to this discussion such leisure as I can command, because I am solicitous that the comparatively small body of persons whom Mr. Mackenzie represents should have no reason to think that their complaints had been overborne by the contrary declarations of the much more numerous bodies opposed to them.

Mr. Mackenzie indeed would have himself understood as speaking the sentiments of the entire population of Upper Canada, excepting only a few public functionaries whose interests are opposed to those of the people at large. It is not necessary, however, to have a very long experience of public controversies of this nature to be aware of the levity with which such pretensions are continually advanced upon the slightest and most inadequate ground.

Almost all complaints, the most opposite and contradictory not excepted, which reach this office are nearly as a matter of course, preferred in the name of the collective society: and it becomes necessary to distinguish carefully, in such cases, between mere rhetorical embellishments, and statements made in the cautious and measured tone of truth.

Now, in the present instance, I find that Mr. Mackenzie's views are supported by forty-four petitions, which have been signed on the whole by 12,075 persons.—On the other hand I have before me no less than thirty-three petitions from the different Counties, Districts, Towns, and Townships of the Province, signed by 26,854 persons, who concur in expressing their cordial satisfaction in those laws and institutions which the other sort of petitioners have impugned. Such a body is far too numerous, and many of the individuals composing it are far too considerable in their station and character to justify the supposition that they can be in a state of dependance on the local government, or controlled by any unworthy influence in their public conduct. I am driven to the dilemma of either supposing this great mass of the people of Upper Canada ignorant or corrupt, or of concluding that a very small minority of the whole population concur in Mr. Mackenzie's views. The former supposition is as improbable as it is offensive.—The latter, however contradictory to Mr. Mackenzie's assertions, is verified by many of the particular facts which he has advanced or admitted; but though I conceive this gentleman's constituents to be opposed by the general current of public opinion, I do not

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in the slightest degree mean to dispute their collective or individual respectability, and there is no class of the Canadian people, however small, nor individual amongst them, however obscure his station, to whose petitions His Majesty does not require that the most exact and respectful attention should be given.

I shall, in the first place, advert to the paper to which Mr. Mackenzie has given the title of "Observations on the state of the representation of the people of Upper Canada, in the Legislature of that Province." In performing this task, however, I must decline to pursue the discussion into those redundant and misplaced details with which Mr. Mackenzie has encumbered it. Thus, for example, I shall pass over in silence whatever is stated respecting the case of Mr. Stuart, the Attorney-General of the adjoining Province, and the state of the borough of William Henry, for the representation of which, in the Assembly, Mr. Stuart was a candidate; neither shall I enquire into the justice of the reproaches with which Mr. Mackenzie assails the conduct of former administrations, both in this kingdom and Upper Canada, upon occasions which have long since passed away, and questions now become wholly obsolete. I can address you only for some practical purpose, nor is there any measure suggested by the Petitioners or their Agent with a view to which, such a retrospect seems to me either necessary or desirable. I must add that if it were fit to review the past history of the Province, it would be impracticable to assume Mr. Mackenzie's paper as the basis of such an enquiry, since it is drawn up in an utter disregard of method, and in such a manner as to render the difficulty of distinguishing between assertion and proof, deliberate statements and the exaggerations permitted to an advocate, almost insuperable. I shall limit myself to the single consideration whether he has brought to light any grievances, for which His Majesty, in the legitimate exercise of the authority or influence of His Government, can be called upon to remedy.

The great object of Mr. Mackenzie's censure is the Election Law, which was passed by the Lieutenant Governor, Council and Assembly of Upper Canada, in the year 1820. I might, perhaps, not without reason, raise a preliminary objection to the discussion of that question at all. If the Election Laws of the Province require amendment, the change must originate not with the Executive Government, but with the popular branch of the local Legislature. Any interference of the Ministers of the Crown would be reprobated probably by Mr. Mackenzie himself, and certainly by his brother journalists, as an unconstitutional encroachment. If therefore I advert to the question at all it is because, in the prospect that such a discussion will be provoked by the Petitioners, I think it fit that you should be apprised of the views which His Majesty's Government entertain on this subject, that you may not be destitute of a rule for your guidance in the acceptance or rejection of any bill which may be passed by the Legislative Council and Assembly for the amendment of the Election Laws.

If I have found occasion to lament the redundancies, I cannot less

regret the deficiencies of Mr. Mackenzie's documents. He has travelled through this protracted discussion without finding himself called upon to notice, still less to refute the arguments by which it has been usual to vindicate the constitution of the Provincial House of Assembly. Yet it is impossible that he can be ignorant of them; nor credible that he should regard them as deficient, at least in plausibility.—An ignorant reader of his papers might be left with the impression that the question was altogether new, and that the existing constitution had never been vindicated on the principles and on the example of the most free and independent governments. How utterly remote this is from the fact, is clear to every man whose attention has been given to the affairs of Upper Canada, for the last few years. Mr. Mackenzie has therefore imposed on me the necessity of drawing a general outline of that defence of the law of 1820, which he has passed over in silence, but which is far too important to be disregarded by any fair and impartial inquirer.

It is a fact familiar to all who are conversant with the Legislative history of North America, either in the United States or in the British possessions that a problem of no light difficulty has continually arisen respecting the distribution of the Elective Franchise amongst the inhabitants resident in different parts of the same State or Province.—The surface of the country is generally divided for political purposes into sections of nearly equal areas, but those couptics or townships which are in the immediate vicinity of the capital or which are intersected by great navigable streams, or bounded by lakes, are peopled with far greater rapidity than the more remote Districts. Hence it has frequently happened that a single metropolitan or trading county has contained a population exceeding in wealth and number many newly settled counties of similar dimensions. Accordingly, when capital and numbers have been made the exclusive basis of the representation, one portion of the State or Province has acquired an influence in the Legislature which has reduced to comparative insignificance the weight of all the other divisions of the country. The favoured District has thus been able through its representatives to throw upon the less fortunate sections, a most unequal weight of taxation, and to refuse to them a fair participation in the benefits of the judicial and other institutions, to the support of which the revenue was applied. Local interests have predominated over the general interests, and discontents have been engendered, threatening the stability of the Government and tending to an abrupt severance of one part of the State or Province from the rest.

In the State of Maine, as I am informed, this difficulty was so sensibly felt as to have led to the introduction of the system adopted in Upper Canada in the year 1820. In apportioning the elective franchise among the inhabitants, the Legislature did not confine its attention exclusively to the question of property and of numbers, but introduced a new element into the calculation. They considered that a small number of persons occupying one county might reasonably claim as large

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a share in the Representation as a much larger and wealthier body occupying another county of equal dimensions. By this method members were drawn from every part of the Province: the local wants of every part were explained, and the interests of each vindicated. In a densely peopled country like Great Britain, possessing such internal communication as to secure the immediate diffusion of intelligence from one end of the kingdom to the other, this precaution might be the less necessary, since no part is so remote or inaccessible as not to be rapidly reached by information of every projected law, or as to be destitute of the means of making an early protest against any measure injurious to its welfare. Yet even in this kingdom, where the subject has within the last two years undergone the most public and rigid scrutiny, no one, so far as I am aware, has seriously advanced the opinion that the Representation of the metropolis should bear to that of the country at large the proportion which the wealth or population of London bears to that of England collectively.

Such a principle would have given to the metropolitan districts between forty and fifty members, a scheme which I need scarcely say would have been rejected by the entire body of the people, as altogether unequal, though resting upon a foundation of the most perfect nominal equality.

It appears, however, to have been perceived by the Upper Canadian Assembly, in the year 1820, that by simply adopting the rule to which I have referred, they might extricate the Province from one difficulty at the expense of another yet more considerable. A county might contain a very inconsiderable body of persons for some time after it was first redeemed from the wilderness, and thus a choice of members might virtually be committed to a very few electors, who might themselves be subject to some unworthy influence. It was therefore required that no county should be represented in the Assembly by a distinct member until the inhabitants numbered one thousand, at least.—But with the foresight which is perceptible in every part of this law, it seems to have been perceived that there was considerable danger in leaving any body of new settlers wholly unrepresented; and to obviate that inconvenience, the inhabitants of each county whilst yet below the required number, were authorised to vote in the least populous adjoining county.

Thus without being betrayed into a sacrifice of the substance of good government by a superficial attention to a merely nominal equality, the Legislature of Upper Canada, in the year 1820, justified the confidence reposed in them by the constitution. They were too conversant with the real business of life to suppose that a great social system could be practically carried on without advancing a little beyond the most obvious and elementary maxims, or that the inevitable intricacy of the public affairs of the Province could be met without some degree of complexity in its political institutions. They therefore embraced in their law provisions for the protection of all classes, however obscure and remote from the notice of the local Government, for the control of

that undue influence which mere wealth and density of population would, otherwise, have exercised, and for the gradual enlargement of the representative body as the constituency should itself increase.

I cannot suppose that a gentleman who has taken so active a part in the affairs of the Province as has fallen to the share of Mr. Mackenzie, should have been really unapprised of considerations so familiar to every man acquainted with the subject as these to which I have adverted, though as a controversial writer he may perhaps have not consulted ill for the momentary success of this argument, in suppressing all allusion to them.

I proceed to the next objection which Mr. Mackenzie has made to the Act of 1820, which, in his own language is, that it created a "borough interest." In less invidious terms the fact appears to be that it gave one member to every town in which the Quarter Sessions of the District might be holden, and which contained, at least, one thousand inhabitants. Those towns were, therefore, placed in precisely the same predicament as the counties of the Province. Now if Mr. Mackenzie's principle, that wealth is the proper criterion, be just, this civic representation was wisely established, for it can scarcely be denied that one thousand persons inhabiting the same town will, generally, be the proprietors of a larger collective capital than a rural population of the same extent. If the principle of numbers be correctly assumed by Mr. Mackenzie, then, also, it follows that the Towns were rightly enfranchised, since it is in the Towns that the most rapid enlargement of population usually takes place, and since if members had been refused to them on the ground of paucity of numbers a similar refusal must have been extended to all the newly settled counties. But I greatly understate the argument. A town possessing a thousand inhabitants will yield a much larger number of actual voters than a county equally populous, supposing the qualification to be, in either case, of equal amount. In the one case the franchise is exercised with the greatest facility, and in the other at an expense of time and labour, which, comparatively, few will incur. Nor can I forget that, in every part of the world, civic population is more intelligent and more disposed to watch over public subjects, than a rural population of equal numbers; because the first enjoy the constant advantage of mutual intercourse, and co-operation in public affairs, of which the latter are in a great measure destitute. It is not at all surprising that so enlightened a people as are the great body of the inhabitants of Upper Canada should have expressed in very strong terms their dissent from the views which Mr. Mackenzie thus advocates; or that a people so conspicuous for their zeal for civil liberty should be so decidedly opposed, as by their petitions they appear to be, to plans which would sacrifice its substance to a very superficial theory.

It is further objected that the law of 1820, placed the projected University in the list of constituent bodies, and from the terms of the charter subsequently issued, it is inferred that the University was to become what is termed "a nomination borough, under the especial pa-

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tronage of the Church and State." I should scarcely have anticipated that any man, and least of all a man devoted to literary pursuits, would have denied the propriety of giving a representation to the principal seat of learning in the Province. It would be superfluous to expatiate on the importance of institutions for the education of youth in literature, science and religion, especially in a newly settled country, and I am well assured that neither in the Council nor Assembly could a single gentleman be found who would not gladly receive as a colleague a person representing the collective body of literary and scientific men in Upper Canada, or who would not gladly support, by that distinguished honor, the cause of sound learning.

You will observe that I do not here refer to an University constituted in the manner proposed by the original charter of incorporation.—Every man in Canada, however, knows, nor could Mr. Mackenzie have been ignorant, that so far from any anxiety having been felt by the King's Government to maintain that charter against the wishes of the great majority of the people, every possible measure has been taken to refer to their representatives the decision of the question, in what form and on what principles the College should be founded. It is indeed Mr. Mackenzie's fortune to be opposed to a large majority of the House of Assembly; but it can scarcely be expected that in deference to any individual, or to the small, though respectable, minority for whom he acts, the King's Government should entertain the slightest distrust of the wisdom or fairness of the resolutions which it may be the pleasure of the Assembly to adopt on this or any other subject.

It is next made the subject of complaint that the law as interpreted by the Court of King's Bench entitles the county members only to wages, and that the efforts of successive houses to ensure a certain degree of pecuniary independence to the new village representation has been rendered ineffectual by the Legislative Council. On what grounds the objections of the Council may rest I am not distinctly apprised.—I might indeed conjecture their reason to have been that counties could with difficulty find representatives within themselves on other terms, while towns will always possess commercial and other inhabitants to whom a temporary residence at the seat of government would be attended with no inconvenience. I have no right to interfere with the deliberations of the Council, but I am able to signify to you His Majesty's pleasure that you should not oppose any objection to any law which may be presented for your acceptance, for placing the Town and the County Representatives on the same footing in this respect.

It is made a subject of complaint that in the year 1821, attempts were made first to deprive the land owners of the honor of assessing themselves to pay their members, wages, and secondly to establish the right of voting in persons possessing a license for the occupation of Crown Lands without having actually received a grant, and that the last of these schemes was revived 1827. I will not pause to investigate the propriety of measures which were never carried beyond an

ineffectual attempt. It is enough for me to know that upon subjects strictly within their cognizance, the House of Assembly adopted a decision by which any such projects were frustrated. Whether they are well judged or otherwise the King's Government are not in any sense responsible for them, and the discussion of public affairs would be utterly interminable if every unsuccessful motion made several years ago in either House of the Provincial Legislature were to be made the subject of censure and enquiry, at any distance of time.

The remark that various religious bodies are excluded from the elective franchise because their members cannot conscientiously take an oath, raises a question which well deserves serious consideration. You will call upon the Law Officers of Upper Canada to report what is the law on this subject. You will have the goodness to acquaint me whether you perceive any practical objections to placing the various denominations of christians mentioned by Mr. Mackenzie on the same footing, in this respect, as the Society of Friends. I shall be happy to introduce a bill into Parliament for amending this part of the Constitutional Act of 1791, unless there should appear to be some difficulty in that measure which does not occur to me at present.

Mr. Mackenzie then objects to the law which requires that every member of the House of Assembly should possess an unincumbered estate in land assessed at £80 or upwards. This regulation he attributes to the Officers of the Government. On what grounds they are entitled to the credit, or responsible for the discredit of having originated this law, does not appear, nor does that question seem to myself of much importance. I will not digress into the discussion of the great general principle involved in this enactment. Should any bill for the amendment of it be reserved for His Majesty's consideration, I can only state, that the most careful attention will be bestowed upon the subject.

It is, however, not to be overlooked, that the Government are said to have retained in their own hands the possession of all the uncleared territory, that they might thus avail themselves of the last mentioned law, and qualify a favorite whenever it might be deemed expedient. I might, perhaps, not unreasonably express my surprise that Mr. Mackenzie, acting as the delegate of so many persons in Canada, should have passed over in silence the fact that His Majesty had been graciously pleased, upon my humble advice, to interdict the gratuitous disposal of the Crown Lands, and to render them all the subject of public competition, to the utter exclusion of any such favoritism as is thus deprecated.

If the law which disqualifies any British subjects from voting at elections till the expiration of seven years after their return from a residence in a foreign country, be still in force, I subscribe to Mr. Mackenzie's opinion, that it cannot be too soon repealed; and you will adopt all constitutional means in your power for promoting the repeal of it. On this subject I concur in Mr. Mackenzie's reasoning, however much I may be disposed to think that the weight of his arguments would

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I must entirely decline, as perfectly irrelevant to any practical question, the enquiry whether at a comparatively remote period, prosecutions against the Editors of newspapers were improperly instituted or not. It is needless to look beyond Mr. Mackenzie's journal to be convinced that there is no latitude which the most ardent lover of free discussion ever claimed for such writers, which is not enjoyed with perfect impunity in Upper Canada.

The law of 1818, which prohibited public meetings, is again made a subject of remonstrance, although it was repealed two years afterwards. To what end such complaints are preferred, I am wholly at a loss to surmise. Yet it is not unimportant to remark, that the Assembly which repealed this Statute was, if I mistake not, the same which enacted the election law, and that the zeal which they avowedly exhibited for the liberties of the people in the one case, is scarcely consistent with the imputations made by Mr. Mackenzie against their motives in the other.

It is not a little singular that in the present year I should receive a lengthened repetition of the complaints upon the alien question, which came before me in the year 1827, when I formerly held the seals of this department. Mr. Mackenzie describes the instructions which I then issued "as just and equitable," and as having "removed one grand cause of discontent." I do not feel therefore, that after the adoption of a measure so characterized, I can be again required to enter upon a detail of the very grievances for which it is admitted that an effectual remedy has been provided.

In following the order adopted by Mr. Mackenzie, I next reach a statement that the local government encourage dependent persons holding offices at pleasure, and "debarred by the laws of England from being concerned at elections, to use the great influence attendant upon office, to secure seats in the representative body, in order that its voice may be wholly under executive control although," adds Mr. Mackenzie, "it is an undoubted truth that the interests of the local authorities and those of the colonists are separate and distinct." As a writer habitually engaged in political controversies, Mr. Mackenzie may not be fully alive to the injustice of advancing charges against the servants of the public, unsupported by distinct evidence of their truth; but it is my duty to refuse credit to such imputations as I have quoted, unless they should be clearly substantiated by evidence. For widely as I dissent from the assertion so confidently made, that the interests of the local government are distinct from those of the inhabitants at large, I admit that an abuse of the influence attendant upon office, for the purpose of exercising an improper control over elections, would justly expose to the heaviest censure those to whom it could with truth be imputed. On this subject, however, in the absence of any more definite statements, I can only instruct you that His Majesty expects and

requires of you neither to practice, nor to allow on the part of those who are officially subordinate to you, any interference with the right of his subjects to the free and unbiassed choice of their Representatives.

It is represented that with a view to raise up and multiply the friends of arbitrary and exclusive principles, persons in authority, in and out of the Assembly, resist all plans of general education, and that places of learning are established only for the children of those who hold Government offices, and a few other influential and wealthy individuals. It is not easy to repress the expression of those feelings with which I cannot but receive such unworthy imputations upon the character of so many upright and enlightened men, unsupported by any proof whatever, except a general reference, which I am unable to verify, to a report said to have been made on some occasion by the present Chief Justice of the Province, on the case of Mr. Osgood.

Even assuming, which is most improbable, that Mr. Robinson really obstructs to the utmost of his power the advance of general education and knowledge, from the base motives so lightly imputed by Mr. Mackenzie, I utterly deny that the King's Government, either in this country or in Upper Canada, are responsible for the opinion which Mr. Robinson may some years ago have advocated in the House of Assembly. It is, however, not unimportant to advert to this subject, because Mr. Mackenzie cannot assert more peremptorily than I deny the existence of any such narrow and preposterous policy as that of consigning the children of the yeomanry to ignorance, lest knowledge should render them independent in action or in thought. On the contrary, there is no one object connected with every part of his extensive dominions which His Majesty has more at heart than the general diffusion of sound knowledge in the legitimate and most enlarged sense of that term. This is not merely the first and highest interest of society, but is essential to the right use and peaceable enjoyment of every other civil and social privilege. The Legislature of Upper Canada have already been invited to consider in what manner the University can be best constituted for the general advantage of the whole society; and His Majesty has studiously abstained from the exercise of his undoubted prerogative of founding and endowing literary or religious corporations until he should obtain the advice of the Representatives of the people for his guidance in that respect. In the same spirit, His Majesty now directs me to instruct you to forward to the very utmost extent of your lawful authority and influence, every scheme for the extension of education amongst the youth of the Province, and especially among the poorest and most destitute of their number, which may be suggested from any quarter with a reasonable prospect of promoting that great design. All minor distinctions should be merged in a general union for this important end; and that the head of that union, the local government should be found encouraging and guiding, and to the utmost of its power assisting all the efforts which may be made to create or to foster a taste for intellectual enjoyments and pursuits. A

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large portion of the unappropriated wilderness has already been set apart for the purpose. If any other system of local assessment, for the building of school houses and the maintenance of Teachers, should be thought desirable, your assent will of course, be cheerfully given to any such law. Or if the Provincial Legislature should be of opinion that such funds would be more advantageously raised by a general duty, of which they would retain to themselves the specific appropriation from year to year, I should hail with the utmost satisfaction the enactment of a statute of that nature. This, however is a subject involving so many and minute details, that it is, of course, impossible for me to advance beyond the expression of a general but most earnest solicitude for the furtherance of the cause of education, in its most comprehensive sense, in Upper Canada. Confident in your own concurrence, and in that of the members of the Legislature in those views, I cheerfully remit to you and to them the office of originating the necessary plans for reducing the general principle into a definite shape, requiring of yourself in the first instance only, that you should quicken the attention of the Legislative Council and Assembly to this subject, should you have reason to apprehend that it is in danger of being overlooked or forgotten.

Mr. Mackenzie announces his design to deliver separate papers respecting the organization of the Legislative Council, and, in the mean time, assails that body with charges in the highest degree derogating from their character, though too vague to admit of any precise discussion. Amongst these general charges, I, however, find a statement, that the "Government has annually supplied itself with the revenues of the Province, utterly disregarding every resolution of the Assembly, in the tenth Parliament to correct the evil. Information even (he adds) as to the objects to which the people's money is applied, is annually refused, in respect to a great part of the funds of the Colony, by the Colonial Governors, to unanimous addresses of successive Assemblies—the Royal Instructions being the plea of such refusals." To whatever facts the writer may in this passage refer, I am happy, on an occasion of stating to you, that if the Royal Instructions are supposed to forbid the most unreserved communication to the House of Assembly of the manner in which the public money of the Province, from whatever source derived, is expended, such a construction is foreign to His Majesty's design. There is no portion of the Royal revenue, whether the proceeds of Crown Lands or from whatever other source derived, of the employment of which the House of Assembly should not have the most ample and particular information which they may at any time think proper to call for. Nothing is to be gained by a concealment upon questions of this nature, and a degree of suspicion and prejudice is not rarely excited, which, however ill founded, often appears in the result, to be incurable.

Mr. Mackenzie condemns the present House of Assembly not less vehemently than the local Government and the Legislative Council, representing that they were chosen by the people in a state of dejection.

tion and despondency as to the Reform of abuses. To sustain his argument he is thus compelled to draw a picture of the Canadian character, in which I am confident he does His Majesty's subjects, at large, great injustice. I am well persuaded that no people on earth are less likely to yield themselves to the unmanly weakness of despairing of the public good, and of betraying their own most sacred duties in so pusillanimous a spirit. And in truth, Mr. Mackenzie must have persuaded himself that a degree of ignorance exists in this country respecting the affairs of Canada which would be absolutely ludicrous, if he can really expect credit for the statement that in the year 1830, an utter despair of vindicating the public liberties had taken possession of the mind of the inhabitants.

I deeply regret that in some parts of his papers Mr. Mackenzie should have left in much obscurity the simple matters of facts which it might have been really important to consider. Thus he speaks of preachers taught to meddle in the political quarrels of factions and parties, and of their leaders being "accommodated with seats in the political councils of the State, and of the Government keeping in pay a political priesthood." It would surely have been as impressive and more useful to have stated that the Bishop and the Archdeacon are both on the list of the Legislative Council, but that it is expected of those gentlemen that they should altogether abstain from interference in any secular matters which may be agitated at that board. Whether even under this restriction their holding such seats is really desirable, is a question upon which I am fully prepared to listen with the utmost attention to any advice which I may receive from yourself, from the House of Assembly, or from any other competent authority. I have no solicitude for retaining either the Bishop or the Archdeacon on the list of Councillors, but am, on the contrary, rather pre-disposed to the opinion that by resigning their seats they would best consult their own personal comfort, and the success of their designs for the spiritual good of the people. But any such resignation must be voluntary since the office is held for life, and were it otherwise, no consideration could induce me to advise His Majesty to degrade the Bishop or the Archdeacon from the stations they occupy, except upon the most conclusive proof of misconduct. But even Mr. Mackenzie does not impute any violation of duty to them. With respect to the charge shewing an undue preference to preachers of religion belonging to the established churches of this country, it is so utterly at variance with the whole course of policy which it has been the object of any despatches to yourself to prescribe, that I cannot pause to repel it in any formal manner.

Much complaint is made of the expense of elections, and it is said that public officers are enabled by their superior affluence to overpower by a lavish and corrupt expenditure those who have no other recommendation than their personal character. If there is the least foundation for this complaint as to the expense of elections (which I have not the means of ascertaining) you will signify to the Legislative

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bodies that it is the earnest desire and recommendation of His Majesty that every practical method should be taken for correcting what would be so great an evil, by reducing the cost of elections within the narrowest possible limits. I cannot however omit observing that even if it should turn out to be true that the cost of elections is as great as it is represented to be, the official return of the civil establishment of the colony sufficiently shews that it is quite impossible that the salaries received by public servants can enable them to avail themselves of this circumstance in the manner which has been alledged.

Mr. Mackenzie states that an enquiry into the state of the representation was instituted by the present House of Assembly on his own motion, and he has transcribed the resolutions adopted by the committee, but he adds that "such propositions were not suitable to the majority in the present Assembly," that they appointed a new committee which reported that no alterations were required in the existing laws, except by giving the County of York an additional member, and that on receiving this report, the House instead of giving York a member took one from it; and as I understand increased the number of members for the District of Bathurst.

It suits the present view of this gentleman to call upon the Executive Government to censure and dissent from the resolutions of the representatives of the people, adopted after two solemn enquires and supported by a body of Petitioners far exceeding in numbers those for whom he acts. In what language, however, such an interference of Government would be denounced by Mr. Mackenzie himself on any occasion on which he concurred with the majority of the House, it is not difficult to conjecture. It cannot be expected that any decision of the Legislature upon a subject of so much general interest as the Election Laws should escape without the most vehement and unmeasured censure from the parties unfavourably affected by it. Looking, however, not to individual but to general interests, not to the excitement of any dissatisfied party, but to permanent principle, I must positively refuse upon a question so peculiarly within the cognizance of the House of Assembly to place the King's Government in hostility with that body. I have every reason to suppose that the course they adopted was wisely taken: and even if I thought otherwise their authority would compel me to distrust my own judgment.

Mr. Mackenzie has concluded this paper by predictions of bloodshed and civil war, and a dissolution of the connection between Upper Canada and this kingdom. He may well suppose that such a prospect would be regarded by His Majesty's Government with a degree of concern and anxiety to which it would be difficult to give any adequate expressions. But against gloomy prophecies of this nature, every man conversant with public business must learn to fortify his mind. They have ever been the resource of those who endeavor to extort from the fears of government concessions, in favour of which no adequate reasons could be urged. I will not adopt the injurious opinions which Mr. Mackenzie seems to entertain of the people of Up-

per Canada. I reject as a libel on that loyal and enlightened race of men, the supposition that they would violate their sworn fidelity to the King, and desolate their native land with blood, because His Majesty defers to the judgment of His Faithful Commons in Provincial Parliament assembled, supported by large bodies of the most respectable and numerous petitioners, rather than to the opinions of a far less numerous, though probably a highly respectable portion of his subjects. I will not for a moment speculate upon the probabilities of such a revolt. It is a subject which it would be utterly indecorous to agitate. The people of Upper Canada have the highest claims to the attachment of their Sovereign and of the British nation; and whatever efforts may be made to excite discontents among them they will, I am persuaded, believe that His Majesty and the Parliament of this Kingdom, in common with the entire mass of the population of Great Britain and Ireland, cherish towards them no other sentiments than those of the most profound respect for their constitutional rights, and the most earnest desire for their social welfare. In that spirit His Majesty's Ministers are, and have ever been, prepared to refer to the Provincial Legislature the consideration of every question directly or remotely affecting the interests of the Province, and even to anticipate their probable wishes as far as is consistent with the discharge of those Executive duties which the constitution has devolved upon the local government and its various functionaries. I am unconscious of a solitary instance in which my colleagues and myself have sanctioned any attempt to derogate from the privileges of the Provincial Legislature or the rights of any class of His Majesty's Canadian subjects; and in the consciousness of having acted under the constant guidance of these principles, we can cheerfully appeal to the people at large for that just appreciation of the measures of government, which, if I could credit Mr. Mackenzie, I might suppose was not to be expected.

I proceed to the second paper, entitled, "an argument intended to shew that it is expedient to dissolve the present Provincial Parliament of Upper Canada, and summon a new one."

After enumerating the various topics embraced in the former paper, Mr. Mackenzie proceeds to state that the metropolitan county condemned the conduct of the majority of the present Assembly; first by his own election in January 1832, and secondly by his election in February last. He adds that the decision of the County of Grenville, in rejecting Mr. Jones, and choosing Mr. Norton, testified their concurrence in his views. For the reasons already explained, I must be permitted to believe that the electors for the metropolitan county, enlightened and worthy of all respect as they certainly are, cannot be considered as perfectly impartial judges upon the question of representation. The proposed change would invest them with an influence of which the counties remote from the seat of government would have the strongest reason to complain—nor is the voice of the County of Grenville entitled to outweigh the decisions of many others, counties and towns which are obviously opposed to it. It is then said that

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the present House should be dissolved "because it is manifest that the great body of the people are justly dissatisfied with their proceedings." It is easy to make such assertions, but not so easy to substantiate them. I must upon such a question give more weight to the recorded opinions of the 26,854 persons who have expressed their dissent from Mr. Mackenzie's views, than to that gentleman's declaration supported by similar attestations.

The writer then enumerates various acts of misconduct which he attributes to the present Assembly. These are the rejection of bills for the regulating of township officers, for education, and for amending the jury laws. They also are charged with having granted a permanent civil list without stipulating for the independence of the judges—and this measure is said to have been passed both by the Assembly and the Council in an unusual and indecent haste. Respecting judicial independence, it must have been known to Mr. Mackenzie, that without waiting any solicitations from the Province, His Majesty had long before the date of this paper, directed you to suggest the enactment of a bill for that purpose. His Majesty would rejoice to give his assent to such a bill, and doubts not that it will speedily be enacted. The indecorous haste which is said to have occurred in granting the civil list seems to be very harshly ascribed to the House. The King had, without any request from them, placed at their disposal the revenues of which the law had vested the appropriation in himself: and if in a courteous and respectful acknowledgement of so frank a concession, the ordinary forms of business were dispensed with, it is surely neither wise nor gracious thus to censure a proceeding intended and calculated to strengthen the bonds by which the Sovereign and his people are happily united. The question of Juries and Township Officers are precisely such as to admit an infinite diversity of opinion respecting each specific measure proposed to the House; and no unprejudiced person would assume that a dissent from his own views on such topics implied any failure of zeal for the public good.

This paper proceeds to accumulate a body of charges against the Assembly, into the justice of which it is utterly impossible that I should enter. Whether their appropriations of public money have been prudent—whether Mr. Mackenzie himself was properly expelled—whether a reduction of fees ought to have been made—whether the term "misguided individual" was correctly applied to Mr. Mackenzie and others, in the address to His Majesty, are topics on which I conceive it to be the duty of the King's Government rather to defer to the judgment of a body enjoying the most extensive means of local information than to oppose to them conjectural opinions of their own.

The same conclusion is next urged on the ground of the angry and excited state of the public mind. I should have thought that, assuming the accuracy of this statement, anger and excitement were precisely those tempers of mind in which men would be least qualified to exercise a wise and dispassionate judgment on the great question which it is proposed to refer to their determination.

The recent dissolution of Parliament in this kingdom is quoted as a precedent in favor of a similar proceeding in Upper Canada. I will not discuss the accuracy of the analogy of which it is thus attempted to draw between the two cases; but content myself with saying that I believe no impartial man will deny that no real similarity exists between them. However well adapted such a topic may be for popular effect it would be at variance with all sound principles to accept as a ground for a great political measure.

Mr. Mackenzie appears to have foreseen that a very numerous body of petitioners would protest against his recommendations. It is satisfactory to find that in his attempt to repel their effect by anticipation, he has no specific statement to make or argument to urge, but that in his opinion, such petitioners would shew "the follies of the advisers of the government, and their own inexperience." With what propriety "folly" is thus freely attributed to more than 26,000 persons, or "inexperience" to those who are in the same breath condemned for having exercised an improper authority from the very infancy of the Province, it were needless for me to state.

The House themselves, it appears, refused to concur in an address for their own dissolution. In favour of the motion eighteen members voted, and twenty-seven against it. The two parties it is said each representing populations numerically equal. But, it is added that nineteen of the majority were persons holding offices or places at the pleasure of the Crown. Upon what grounds Mr. Mackenzie makes this assertion I am at a loss to conjecture. I have before me a list of the majority who voted upon the occasion referred to, and on comparing it with the annual return of the civil establishment of the colony for 1830, I cannot discover that it includes more than six gentlemen holding any public employment. Of these six, one fills a situation of which the emolument is little more than nominal, being only £9 a year—of the remaining five, two are the law officers of the crown, whom I presume Mr. Mackenzie can scarcely hold it to be desirable to exclude from the Assembly. If it could be shown that the Crown really possessed an undue influence in the Provincial Legislature, His Majesty would not hesitate to assent to any law which might be passed for the purpose of limiting the number of persons holding offices at pleasure who should be permitted at one time to sit there. I cannot however believe that any such undue influence could possibly be exercised. The popular system of election which exists in Upper Canada, would enable the inhabitants speedily to dismiss from the Assembly any representative who might be capable of betraying his duty to his constituents by supporting a line of policy injurious to their interests, for so paltry a consideration as £50 or £60 a year, which seems to be the amount received by some of the persons to whose presence in the Assembly Mr. Mackenzie objects. If the majority of the electors of any town or county think fit to return as their representative a gentleman who is in the public service, this only proves that the general policy of the Government by which he is employed, is in their

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opinion entitled to approbation; nor if so, can I see the slightest objection to such a choice: on the contrary I think the presence in the Assembly of a certain number of gentlemen holding official situations, and able to explain the views and objects of the Government on the different subjects which come under discussion, is calculated very much to promote the public interest.

Mr. Mackenzie further contends that the petitions of which he is the bearer should be credited as expressive of the general opinion of the Province, because they accord with the votes of the House of Assembly of Lower Canada—because they are in harmony with the views of the last Assembly of Upper Canada—because this present Assembly has vacillated in some of its measures—because the present House has sanctioned resolutions, bills and addresses, negatived by the Council or rendered ineffectual by yourself—because they correspond with the petitions presented to the House—because they are in coincidence with certain petitions approved by the Assembly in 1828—with others presented to the House of Commons in 1831—and with another address to yourself in December last; and finally because they are supported by a mass of facts and testimony.

These statements do not, as far as I perceive, invalidate the inference which I am bound to draw from the facts that Mr. Mackenzie and his constituents are opposed by a body of petitioners who very greatly outnumber themselves: desirous to attribute to popular opinion, when deliberately formed and calmly expressed, the weight which it is indeed impossible to deny it. I am by that very consideration compelled to believe that in acceding to the prayer for a dissolution of the House, His Majesty would be acting not in consonance with the judgment of the people, but in opposition to it. I must believe myself better informed than Mr. Mackenzie, respecting the affairs of Lower Canada, as I have much more ample sources of information, and I therefore deny that the cases of the two Provinces are so parallel, or alike, that the resolutions adopted in the one could, with any propriety, be transferred to the circumstances of the other. I cannot assume that the ninth Provincial Assembly, were it now sitting, would retain the opinions it held in a former and different period. The changes of opinion in the present House of Assembly rather prove that that body are attentive to the wishes of their constituents than the reverse, and certainly afford no argument to shew that they have lost the public confidence. The "facts," and the "testimonies" to which reference is made, I have considered in the former part of this Despatch.

The dissolution of the House is again urged upon His Majesty, because the same principle of extending the representation to meet the increase of the population was recognized in the Lower Canada bill of 1829—because His Majesty assented to a reformed representation in this country—because it is desirable to conciliate the people of Upper Canada—because the Canada Committee of 1828, advised a conciliatory and constitutional system of Government to be observed in the Canadas: and because Mr. Hume has, on some occasion, which is not

explained, excited expectations in the Province which the refusal of a dissolution would disappoint.

I answer that for whatever language Mr. Hume may have employed, that gentleman alone is responsible; and His Majesty's Government cannot be called upon to answer for any disappointment which they may have had no share in producing. I further answer that the advice to constitute the Canadas by a constitutional system of Government, has been constantly borne in mind, by my colleagues and myself; but that I know not what principle of the constitution calls upon us to advise His Majesty to oppose the decided voice of the House of Assembly, and the voice of the great apparent majority of the people.

To retain their affections is the great object of His Majesty's policy; but how am I to suppose that this object would be promoted by thwarting the declared wishes of so preponderating a majority of them? The Royal Assent to the Reform Bill in this kingdom, proceeded on no principle which could be applied to the present question; and the reference to Lower Canada and the Election Law of that Province of 1829, proves only how very imperfectly Mr. Mackenzie is acquainted with the real history of that law.

I have thus pursued the two first papers laid before me by Mr. Mackenzie in the most ample detail. If it should occur to you that I attach to them more importance than can be fairly claimed for the views of a single man writing under the irritation of personal resentment, I would reply that I have always felt it to be my duty to consider any representation which may be laid before me upon important public questions, with reference to the intrinsic merits of the questions themselves rather than to any matter personal to the individual from whom they may immediately proceed; and in this case I have received these documents from Mr. Mackenzie, not merely as expressing his own opinion, but also as explanatory of the views of those who have deputed him to represent what they consider their grievances to His Majesty. To them the utmost possible respect is due; and although they have not succeeded in satisfying me that their opinions are right and their views correct, I have been anxious at least to prove that they had undergone the most careful scrutiny which it was in my power to bestow upon them. The only object which His Majesty's Government can have in view is the improvement and welfare of the Province; and it is highly gratifying for them to believe, from all accounts which reach this country, that whilst upon some questions of internal policy, and the state of the law, in certain respects, differences of opinion may prevail, the prosperity of the Province is rapidly advancing in a manner calculated to draw closer the bonds of attachment by which the people are united to the Mother Country. It is the duty of His Majesty's Government at home, and of His Representatives in the Province, to keep those great objects steadily in view, relying with confidence upon the good sense, the right feeling, and the warm loyalty of the people at large. It is by such a course that errors may best be amended, imperfections removed, abuses corrected, and all the sources of public good developed and enlarged.

Having written this despatch with a view to publicity, you have my authority to make it public in whatever manner you may think most convenient.

I have the honor to be, Sir,

Your most obedient Servant,

GODERICH

Major General Sir JOHN COLBORNE, K. C. B. &c. &c.

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